

## **GOP Class Action Bill**

*Next week, the House is expected to consider legislation to expand the jurisdiction of the federal courts over class action cases, **H.R. 1115, the Class Action Fairness Act**. This misguided legislation claims to address problems in current law but it only imposes additional burdens on the already over-tasked federal courts and needlessly changes current uniform rules of federal civil procedure. H.R. 1115 was reported out of the House Judiciary Committee on May 21 with a 20-14 vote (only one Democrat voted for the bill).*

- H.R. 1115 weakens accountability of major companies involved in pending class actions including Enron, WorldCom, and Arthur Anderson for financial fraud and several pharmaceutical companies such as Eli Lilly, Aventis Pasteur and Abbott laboratories. Moreover, this is done on a retroactive basis and would apply to pending cases, unlike the bill considered in the last Congress.
- H.R. 1115 would delay judicial relief by giving defendants vast new opportunities for delaying cases for two years or more and staying discovery during that time period. Again, this would apply retroactively to pending cases.
- H.R. 1115 needlessly burdens federal courts by broadly defining “class actions” to include mass torts and state actions brought on behalf of the general public (an important consumer protection tool for California residents). Federal courts, which lack the resources to handle complex state law issues, would be forced to handle state class actions in addition to their already large caseload and judicial vacancy rate. There are currently 45 judicial vacancies in the federal judiciary and 471 civil cases pending per district court judge, on average, as of 2002.
- H.R. 1115 would hamper judicial relief for injured consumers and other class action plaintiffs. In cases where the federal court chooses not to certify the state class action, the bill prohibits the states from using class actions to resolve underlying state causes of action.
- H.R. 1115 eliminates current uniform rules of federal civil procedure regarding diversity jurisdiction, removal, dismissal, remand, appellate review, and discovery for class action cases only. These new procedural rules would benefit defendants at the plaintiff’s expense and would additionally burden the federal judiciary.
- H.R. 1115 is opposed by federal and state judges including the Federal Judicial Conference, headed by Chief Justice William

Rehnquist and the Conference of Chief Justices (which represents the state chief justices). Other opponents include the American Bar Association, the Association of Trial Lawyers of America, the Consumer Federation of America, the Consumer Union, and the National Organization for Women.

- H.R. 1115 fails to address problems with coupon settlements. This bill's solution to coupon-settlement abuses is judicial scrutiny of such settlements (something that both state and federal judges are already required to do). However, abusive coupon settlements could increase as the increase workload of the deferral judiciary makes judicial scrutiny of such settlements less likely.

*Democrats are expected to offer a substitute to address some of the concerns over class action practices without interfering in the ability of classes of plaintiffs looking for remedies. The Democratic Class Action Improvement Act of 2003 would address settlement abuses, protections against losses, and discretion of appeals. Democrats protect class action members by:*

- Basing attorneys' fees on the amount redeemed by class members rather than on the amount of the settlement, thus eliminating any incentive for a collusive agreement between plaintiffs' and defendants' counsel;
- Requiring the court to make a written finding that non-monetary benefits to the class members in a settlement outweigh the monetary loss;
- Requiring the court to determine that a settlement is fair, reasonable, and adequate to the class, and that it applies only to claims on which the class is authorized to represent members;
- Prohibiting court record and documents obtained during discovery in a class action from being sealed or the made the subject of a protective order unless the court finds it is necessary to protect a particular trade or business secret and is in the public interest; and
- Codifying Federal Rule of Civil Procedure 23(f), which provides courts of appeals discretion to permit an appeal from an order granting or denying class action certification and to use its discretion in deciding to stay proceedings pending outcome of the appeal.

## **Five Reasons to Oppose Class Action “Reform”**

1. Enron
2. Arthur Andersen
3. Firestone
4. Monsanto
5. Service Corporation International

The latest class action "reform" bill would make it more difficult for consumers to hold corporate wrongdoers responsible. In an age when corporate wrongdoing is widespread, pernicious, and devastating, now is not the time for Congress to bend the rules that allow injured consumers to bring class actions. After all, the only thing standing between the consumer and the corporate wrongdoer is the civil justice system.

Consider the behavior of the following corporations:

### **Enron**

- Allowed corporate executives to sell stock options at huge profit while forbidding employees to diversify their 401(K) investments.
- Conspired to hide financial information resulting in a \$1.3 billion loss to employees.
- Overstated profits and hid losses in off-shore subsidiaries in order to manipulate investor confidence.
- Shredded documents and destroyed evidence.

### **Arthur Andersen**

- Failed to properly audit the books of its client, Enron.
- Allowed consulting fee profits to influence its ability and willingness to audit.
- Shredded documents and destroyed evidence.

### **Firestone**

- Knowingly sold defective tires where tread separation caused more than 800 injuries and 271 deaths.
- Failed to recall and replace defective tires in a timely manner.

### **Monsanto**

- Hid 40 years worth of dumping of toxic PCBs, mercury, lead and mustard gas in Anniston, AL.
- Continued dumping toxic chemicals even after dangers were known in order to protect sales and profits.
- Resisted efforts to clean-up polluted river, landfills, and homeowners' property.

### **Service Corporation International**

- The largest funeral home owner in America secretly dug up and dumped burial remains in woods behind Florida cemeteries to make room for additional bodies.
- Secretly buried remains in locations other than those purchased.
- Secretly mixed body parts and remains from different individuals.

## **It's Your Rights They Want**

*Wilmington Star News*, June 1, 2003 (North Carolina)

The companies that make tires that unravel, SUVs that roll over, drugs that cause strokes and HMOs that deny you proper medical care are sick and tired of being sued.

They and other potential defendants want the Republican Congress to protect them from you, and it's been gratifyingly obedient so far.

In the next few days, the House of Representatives might well jump through the hoops for its campaign contributions.

The companies' goal is to minimize "class action" suits – the ones in which injured customers or their survivors band together, hire good lawyers and sue the daylights out of them.

The laws in some states give consumers a better break than federal laws do. That's why these corporations want suits sent to the federal courts, where weaker laws might apply.

As a bonus, getting such cases heard in federal courts might take a lot longer. Federal judges are relatively few and often up to their gavel in work already.

Speaking for the Judicial Conference of the United States, Chief Justice William Rehnquist has asked Congress not to pass this "reform." He also noted that it would be "inconsistent with the principles of federalism."

Federalism, of course, is the religion of many administration officials, congressional leaders and judges – unless it stands in the way of what they want. In such cases, it can be ignored.

Of course, this legislation isn't about constitutional theory. It's about power. These companies don't want ordinary people to get together and sue them. Phooey on federalism.

Members of Congress who vote for this bill will be voting for erring corporations, not injured constituents.

**Editorial: It's Your Rights They Want**

Prepared by  
Rep. Max A. Sandlin (TX-1)

# **Opponents of Class Action “Reform”**

Alliance for Justice  
Alliance for Retired Americans  
American Association of People with Disabilities  
American Bar Association  
American Cancer Society  
American Heart Association  
American Lung Association  
Association of Trial Lawyers of America  
Brady Campaign to Prevent Gun Violence  
Campaign for Tobacco-Free Kids  
Center for Disability and Health  
Center for Medicare Advocacy  
Clean Water Action  
Coalition to Stop Gun Violence  
Communications Workers of America  
Conference of Chief Justices  
Consumer Federation of America  
Consumers for Auto Reliability and Safety  
Consumers Union  
Earthjustice  
Environmental Working Group  
Families USA  
Friends of the Earth  
Gray Panthers  
Greenpeace  
Homeowners Against Deficient Dwellings  
Judicial Conference of the United States  
Lawyers’ Committee for Civil Rights Under Law  
Leadership Conference on Civil Rights  
Mexican American Legal Defense and Education Fund  
Mineral Policy Center  
National Asian Pacific Legal Consortium  
National Association of Consumer Advocates  
National Association of Protection and Advocacy Systems  
National Education Association  
National Partnership for Women and Families  
Natural Resources Defense Council  
National Senior Citizens Law Center  
National Workrights Institute  
National Women’s Health Network  
National Women’s Law Center  
People for the American Way  
Public Citizen  
Senior Citizens Law Office  
Service Employees International Union  
Sierra Club  
Tobacco Control Resource Center  
Tobacco Products Liability Project  
TREA Senior Citizens League  
United Church of Christ Justice and Witness Ministries  
USAction  
U.S Public Interest Research Group  
Violence Policy Center  
Wilson’s Disease Association  
Women Employed

**Opponents of Class Action “Reform”**

Prepared by  
Rep. Max A. Sandlin (TX-1)

**Statement of John Conyers, Jr.**  
**H.R. 1115, The Class Action Fairness Act**  
**May 21, 2003**

The legislation before us is an incredibly simple-minded and one-sided approach to a very complex problem, and I hope this Committee has the good sense to slow down and take a deep breath before we so cavalierly trample on the rights of injured Americans. I have a number of very serious reservations with this bill.

First, it is time for more corporate responsibility, not less. This bill gives corporate defendants – including defendants in civil rights cases – a huge leg up in class action cases by moving class actions out of state courts into the federal court forum they prefer. And it makes it far, far easier for corporate defendants to delay actions by filing motions that will automatically stay proceedings for 18 months or more.

If we have learned any lessons from the Enron, WorldCom, and other financial debacles it is that our citizens need more protections against being swindled, not less. Yet this bill takes us in precisely the opposite direction. That is why it is opposed by consumer and civil rights groups like the Consumer Federation of America, Consumers Union, and the Leadership Conference on Civil Rights.

Second, we ought to keep in mind that there is absolutely no crisis in the state courts. We have not received a shred of testimony that class actions are overwhelming the state court system. However, we do know that because of Congress' increasing propensity to federalize state crimes, we are facing a real workload crisis in the federal judiciary. The result for victims will be far slower access to justice, precisely the result many corporate defendants want.

Third, this bill raises very serious federalism concerns. Although it is described as a simple procedural fix, it could have the effect of wiping out virtually all state class action statutes. This means that even if the

vast majority of plaintiffs are from the same state or a particular state is impacted by an action, its citizens will be unable to obtain recourse in their own courts. If there are specific problems we ought to consider fixing those problems, not banning all state class actions. And that is why the legislation is so strongly opposed by the Federal Judicial Conference and the State Conference of Chief Justices

We owe it to our constituents to protect them from Firestone tires, the Dalkon Shield and deceitful tobacco CEO's. I urge my Colleagues to vote against this legislation which would be very dangerous to consumer rights and safety.